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PETITION NOT PRINTED

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 561

JAMES M. BUSHNELL, PETITIONER,

vs.

O. B. ELLIS, DIRECTOR,
TEXAS DEPARTMENT OF CORRECTIONS.

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS

PETITION FOR CERTIORARI FILED FEBRUARY 25, 1960
CERTIORARI GRANTED DECEMBER 5, 1960

Supreme Court of the United States

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[fol. A]

IN THE 128TH DISTRICT COURT OF ORANGE COUNTY, STATE OF TEXAS

INDICTMENT—Filed Feb. 22, 1944

In the Name and by the Authority of the State of Texas

THE GRAND JURORS for the County of Orange, State aforesaid, duly organized as such, at the January Term, A.D. 1944, of the District Court for said County, upon their oaths in said Court present that James M. Bushnell on or about the 12th day of February A. D., one thousand nine hundred and Forty-Four and anterior to the presentment of this Indictment, in the County of Orange and State of Texas did, then and there unlawfully In and upon H. L. Myers make an assault; and did then and there, by the said assault, and by violence to the said H. L. Myers, and by putting the said H. L. Myers in fear of life and bodily injury fraudulently, and without the consent of the said H. L. Myers take from the person and possession of him, the said H. L. Myers Two Hundred ($200.00) Dollars in money, the same being the property of the said H. L. Myers, with the intent to deprive the said H. L. Myers of the same, and to appropriate the same to his, the said James M. Bushnell's own use, against the peace and dignity of the State.

C. H. MEEKS
Foreman of the Grand Jury

[fol. B] No. 4496

THE STATE OF TEXAS

vs.

JAMES M. BUSHNELL

INDICTMENT

OFFENSE—ROBBERY BY ASSAULT

A TRUE BILL.
C. H. Meeks, Foreman of Grand Jury

FILED 22 day of February, 1944
T. M. Dodd, Clerk District Court
By ..... Deputy

Amount of Bail, $.....

NAMES OF WITNESSES

H. L. Myers
Hop Williamson
I. W. Thompson
Kenneth Stephenson
Robert Marshall
Henry Chastian

THE STATE OF TEXAS)
COUNTY OF ORANGE)

I, Mrs. T. M. Dodd, Clerk of the 128th District Court of Orange County, Texas, do hereby certify that the within and foregoing is a true and correct copy of the original Bill of Indictment, filed in said Court on the 22 day of February A. D. 1944, in Cause No. 4496, styled The State of Texas vs. JAMES M. BUSHNELL.

Given under my hand and the seal of said Court, at office in Orange, Texas, this 29th day of May A. D. 1959.

/s/ Mrs. T. M. Dodd
(SEAL) MRS. T. M. DODD, Clerk

By ..... Deputy

[fol. 1] IN THE DISTRICT COURT OF
ORANGE COUNTY, TEXAS

No. 4196

THE STATE OF TEXAS

vs.

JAMES M. BUSHNELL

STATEMENT OF FACTS

BE IT REMEMBERED that the above entitled and numbered cause came on for hearing in its regular turn on the Docket of the First Judicial District of Texas, in Orange County, Texas of said District, on June 5, 1944, the same being a regular term day of the regular May, 1944 Term of said Court, before the Honorable F. P. Adams, Judge Presiding, and a jury, beginning on said date and continuing thereafter until completed, when the following proceedings were had and the following evidence adduced, to-wit:

APPEARANCES

Joe J. Fisher, District Attorney of the First Judicial District of Texas
and
W. P. Sexton, County Attorney of Orange County, Texas
COUNSEL FOR THE STATE OF TEXAS

James M. Bushnell
COUNSEL FOR HIMSELF

A. L. MYERS, a witness called by the State, having been first duly sworn, upon his oath testified as follows, to-wit:

[fol. 2] DIRECT EXAMINATION

BY MR. FISHER:

Q. State your name, please?
A. A. L. Myers
Q. Where do you live, Mr. Myers?
A. Buna.
Q. What business are you in, Mr. Myers?
A. Carpenter.
Q. How long have you lived in Buna?
A. I have lived there since January of this year.
Q. Since January of this year?
A. Yes, sir.
Q. Where did you live prior to moving to Buna?
A. Vidor, Texas about four or five years, in Orange County.
Q. State of Texas?
A. Yes, sir.
Q. How long did you live in Orange?
A. I was born and raised in Orange, in the Cove, and I moved from the Cove when I was about seventeen, and then I moved back to Orange about five or six years back, moved to Vidor, back to Orange County.

On approximately January 1st of this year, I sold out and moved to Buna.

Q. Have you always been a carpenter by trade?
A. Yes, sir.
[fol. 3] Q. Are you working at that trade at this time?
A. Yes, sir.
Q. How old are you Mr. Myers?
A. Fifty-nine.
Q. Fifty-nine?
A. Yes.
Q. Mr. Myers, on or about February 12, 1944, were you in Orange County?
A. Yes, sir, I was in Vidor.
Q. Texas?
A. Yes, sir.
Q. Did anything happen to you on that date—
A. Yes.

Q. —in Orange County with regard to being robbed?
A. Yes, sir.
Q. Will you in your own words tell the court and jury what you were doing and how it all happened?
A. I had sold out my place in Vidor, and I was building in Buna. I was buying lumber up on the Evadale Road to build. I was going up there to buy a lumber bill, and my car gave out of fix. And I knew of two men that was working in Orange from up there, and I thought soon they would come along and give me a push. Well, I sat on the road about an hour before I could get a push from there where I was at. So two men came along and pushed me to Vidor. They said "We'll get you to work, we work [fol. 4] in Orange". So then I was waiting there to get a mechanic to fix my car, and I stopped the car, running, in a low place, and it slipped back into a ditch. The wheels of the car would roll a little while and stop, roll a little while and stop, and I couldn't get out. So I walked in a beer tavern there and asked if anyone in there had a car to pull me out, and two boys said "Yes, we will pull your out. Have you got a chain in your car?" I said "Yes, I'll go to my car and get the chain". So the boys pulled me out of the ditch and pulled me up the road and stopped.
Q. Did you find out who the boys were?
A. Yes, sir.
Q. Was one of them Robert Marshall?
A. Yes, sir.
Q. Is the other one in the army?
A. Yes, sir. So I asked them what I owed them and they said "Anything you want to", so I gave them $2.00. He said "Being you gave me $2.00, I'll buy you a beer". So they bought a beer and brought it out. And this man, another guy, was asking me "Are you alone?" and "Jesus, ain't it cold?" and asked a few questions, and so on, and I was on the road there and it was gold, anyway, and he said "What do you think of going out awhile?", and I said "What about getting my car fixed?" This fellow called me "Dad", and he said "Dad, get in, get in, I'll carry you to get a mechanic."
Q. That is this man Bushnell you are referring to?
[fol. 5] A. Yes, sir. Well, I got in the car and he

started, but instead of going up this way, he started turning down the Parnell Road.

Q. You got in this defendant's car?

A. Yes, sir.

Q. Anybody else?

A. Just me and him. So he gave me this drink and in a minute I began to feel numb and doped. I said "This is not working like a real drink", and then he reached down and got a six-shooter. I gathered then that my days was numbered, and that he had doped me. And down there one place where the road was muddy, he started to stop, one place, but then he went on trying to pick what he thought was a good place. He drove a little further and stopped and said "Get out here". I got out, and he cursed me and he held the gun on me and hit me. This scar here (witness indicating), it cut clear to the bone. They sewed it up at the hospital. My nose was cut in two.

Q. Your nose was cut?

A. Clear to the bone.

Q. (Counsel indicating on witness.) Those three places?

A. Yes, sir.

Q. What scars are there?

A. Left eye, and a scar on my right eye, and my nose. [fol. 6] Q. A scar over your left eye as well as your right eye, and your nose, and this big scar—

A. Yes, sir, that's the one he gave me. He held the gun on me and said "I'm a good mind to shoot a bullet through your brain". He taken everything, my money, gasoration tickets, and everything. I never had nothing. So I stayed in the ditch about two hours or two hours and a half. This boy made sure of this by getting me off that far and beating me. I was bleeding and hurting, and when I come back, I come back crazy, bleeding, blood in my nose. I might near bled to death. And this other boy got suspicious of this boy taking me off, and so they went to get a constable, and they started hunting me and found me, walking. So they got after him then, asked me his description and I described him and they caught him. He taken about $210.00. I had one $100 bill and the other in $50s; I might have had one $5. They got back $128.00, and he said he spent the other in a gambling dump.

Q. That's Bushnell?

A. Yes, sir.

Q. How much did he get off of you altogether?

A. About $210.00.

Q. And how did he get that?

A. He taken it out of my pocket, out of this pocketbook right here.

Q. Were you in fear of your life, of bodily injury?

[fol. 7] A. I guess I was. It was dark as a dungeon, and the road was muddy, and brother, dark as pitch. I guess I was. It was raining and muddy, and thundering, the worst you ever saw. I guess I was scared, getting hit over the head and in the face. Brother, anybody would have been scared.

Q. And he beat you, put a gash over your left eye?

A. Yes, sir.

Q. And on your nose and your right eye?

A. He did. I was a—so bloody you couldn't tell what I was made of.

Q. Did he hit you with the pistol?

A. Yes.

Q. Did he ever shoot it?

A. No, he never shot it. He threatened to shoot a bullet through my brain.

Q. Had you ever seen the defendant before this?

A. No, not before that night.

Q. You, of course, didn't give him your consent or permission to take your money?

A. No, sir.

Q. Are you certain he is the one, quite positive?

A. Yes, and he taken all—

Q. You say he took some other possessions?

A. Yes, he taken all my ration books, every ration book I had. We got the A cards, they was on him, and my [fol. 8] eyeglasses. He even taken my eyeglasses and hid them, stuck them in the cushion of his car. They got my eyeglasses and A cards, also. The C card was gone and all my food books was gone, my driver's license. I've had to renew all that over in Vidor. This pocket book and the driver's license was sent back to the sheriff's department from Longview.

Q. Is this your billfold?
A. Yes.
Q. You have that?
A. Yes.
Q. Let's see that, Mr. Myers?
A. (Witness tenders pocketbook.)
Q. That billfold was taken off you that night?
A. Yes.
Q. And you later received it through the sheriff's department?
A. Yes, sir.
Q. And about what time of the night did this happen?
A. Oh, I imagine about 10:30 was when it happened.
Q. 10:30?
A. Yes, sir.
Q. How far did you have to walk?
A. About 3½ miles. I had to walk about three and a half miles way down off that Old Ferry Road back up in the woods.
Q. Before you were able to get any help?
[fol. 9] A. I couldn't get any help, no, sir.
Q. Were you in a sort of serious condition?
A. Yes, I was in bad condition. I liked to bled to death, walking all over the road, I was so weak from loss of blood.
Q. Did you try to talk him out of injuring you?
A. No, because it wasn't no use. If I begin to begging and pleading, he was liable to have shot me. Then he could have told the tale.
Q. Did he say anything about the whiskey?
A. No, he said "You cold?" and then he said "Take a drink". And that's when I began to feel numb and doped, and I knew I was doped.
Q. Have you ever seen this Bushnell prior to that night?
A. No, not before that night, that I remember. I never saw the man before that night.
Q. You didn't know him?
A. No, sir.
Q. You know he is the man that robbed you that night?
A. Yes, sir.
Q. And assaulted you?
A. Yes, sir.

Q. Did this happen in Orange County, State of Texas?
A. It sure did.
Q. And at that time, what time of the day was it?
[fol. 10] A. About 12:00 o'clock.
Q. And that was February of what year?
A. This year.
Q. I believe you stated that the officer later returned your gas ration book?
A. Yes, sir, the A. They got them off of him and part of the money.
Q. And some of your money?
A. Some of my money; and my eyeglasses.
MR. FISHER: I believe that's all.
BY THE COURT: Do you have any questions?
BY THE DEFENDANT: Yes, sir.

CROSS EXAMINATION

BY THE DEFENDANT:

Q. You said the night that you claim you was robbed was in February. Didn't you say it was in February when you were robbed?
A. Yes.
Q. They arrested me the 4th of January. The night they claim you were robbed—when you claim I was robbing you, I was delirious. I passed out. I remember I was taking medicine, and as far as remembering anything about it, I don't.
BY THE COURT: You may not testify. You ask him questions. You can tell that when you take the stand.
Q. You say your pocketbook was sent back from Longview?
A. Yes.
[fol. 11] Q. And you say that I robbed you?
A. You did.
Q. You are wrong; I never seen you in my life.
BY THE COURT: You need not consider that. (To the witness: You just ask questions.)
BY THE COURT: Is that all you want to ask?
BY THE DEFENDANT: That's all I want to ask, yes.

RE-DIRECT EXAMINATION

BY MR. FISHER:

Q. He not only robbed you, but he assaulted you bodily?
A. He really did.
Q. Injured both eyes, and on your head?
A. Yes, sir.
Q. Do you know how your pocketbook got to Longview?
A. No, I don't.
Q. Do you know of any connection this defendant had with anybody that might be up there?
A. Well, I couldn't prove exactly, no, but the officer could. He can tell us.
Q. The officer could, you say?
A. Yes, sir.
MR. FISHER: I believe that's all, Mr. Myers, thank you.

RE-CROSS EXAMINATION

BY THE DEFENDANT:

Q. You said I had a gun?
[fol. 12] A. I said you had a gun.
Q. I never owned a gun in my life.
BY THE COURT: You can testify to that when you get on the stand. Is that all?
BY THE DEFENDANT: That's all.
(Witness excused.)

CLYDE WILLIAMSON, a witness called by the State, having been first duly sworn, upon his oath testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. FISHER:

Q. Your name is Clyde Williamson, Hop?
A. Yes, sir.
Q. A constable of Orange County, State of Texas?
A. Yes, sir.
Q. What precinct?
A. Precinct 4.

Q. And you were an officer on or about February 12, 1944?

A. Yes, sir.

Q. Mr. Williamson, Do you have any knowledge of a robbery that took place out in your precinct on that night which Mr. H. L. Myers was robbed of some money?

A. Yes, sir.

Q. Will you go ahead and relate to His Honor and the jury the details of your investigation, how the matter [fol. 13] came to your attention and what you did?

A. There was a couple of boys come to me and told me that there was a fellow that picked up Mr. Myers.

Q. Do you know whose those boys were?

A. Robert Marshall, and Stephens.

Q. Is Robert Marshall here?

A. Yes.

Q. Do you know where Stephens is?

A. He is in the army.

Q. All right.

A. So they said that they saw him with a gun and said he turned off the wrong way to get him home, and said "He, you better look and see about it; it don't look ri[illegible]". So I got to hunting him. I started hunting him about 9:00 or 9:30, something like that, just guessing—never looked at the time.

Q. And you found him about—?

A. Around 4:00 or 4:30. He was all beat up, coming down the road, dirty and bloody and didn't have his good sense, hardly. He was in pretty bad shape.

Q. That was Mr. Myers?

A. Mr. Myers.

Q. Did he tell you what happened?

A. Yes, and then I put a pickup on the radio to pick him up.

Q. Did he tell you what happened, without relating it? [fol. 14] A. Yes, he told me what happened.

Q. What did you do then?

A. I began to look for him. I put a pickup on the car. I first put a pickup on it for investigation, then after I saw Mr. Myers, I put a pickup on it for the highjacking. Then we started out looking for him. We made every hotel here in Orange, we went to every one of them. We

found out three or four places where he had stayed, and we made them one by one, and was fixing to take a ride down here by the track, a hotel right by the depot, and the boy that was with me pointed and said "There he goes now".

Q. Who was with you?

A. Harry Christian. We took out after him and he took out. We were riding down Green Avenue, and we run him until we caught him. Then we brought him back over here and searched him, and got one issue of gas coupons, and money, and whatever was on him.

Q. How about a billfold?

A. He didn't have a billfold. I asked him what he done with the billfold, and he said he threw it away.

Q. You did recover some money and gas coupons back?

A. Yes.

Q. How about the glasses, did you get them?

A. I got the glasses. He pushed them down behind the seat.

Q. Did you give those glasses and gas coupon book [fol. 15] to Mr. Myers?

A. Yes, sir.

Q. Did you put him in jail?

A. I put him in jail.

MR. FISHER: I believe that's all.

BY THE COURT: Any questions?

BY THE DEFENDANT: Yes, sir.

CROSS EXAMINATION

BY THE DEFENDANT:

Q. You arrested me in Louisiana; you went over in Louisiana and got me.

A. I run you to Louisiana.

Q. I came from Lake Charles. I came back from Lake Charles, and he came across the river and arrested me.

BY THE COURT: You can testify to that when your turn comes up.

Q. Well, you beat me up across in Louisiana?

A. I never touched you over there.

Q. I have scars to prove it on my back.

A. I ain't touched you but once.

Q. You jerked me out of my car over on a Louisiana State Highway, no Louisiana law, just you and two kids, and beat me up without mercy.

A. It wasn't over in Louisiana.

BY THE DEFENDANT: That's all.

MR. FISHER: That's all.

(Witness excused.)

[fol. 16] ROBERT MARSHALL, a witness called by the State, having been first duly sworn, upon his oath testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. FISHER:

Q. State your full name, please?

A. Robert Marshall.

Q. Where do you live, Robert?

A. Vidor.

Q. That's in Orange County?

A. Yes, sir.

Q. How long have you lived in Vidor, Robert?

A. About seven years, it will be this August.

Q. Robert, do you remember an occasion on or about February 12, 1944 in Vidor on which you saw Mr. H. L. Myers and this man here, this defendant, James Bushnell?

A. Yes, sir.

Q. Will you go ahead and tell the Court and jury what you know about seeing Mr. Myers that night and also seeing this defendant?

A. Well, me and a boy friend of mine was in a place in Vidor, a beer parlor, Capp's Place in Vidor.

Q. Who was your boy friend?

A. Kenneth Stephens.

Q. He is in the service now?

A. Yes.

[fol. 17] Q. All right.

A. We was there and Mr. Myers come by, and he asked us to pull his car out of the ditch. Kenneth asked him did he have a chain, he said "Yes", so we went out and his car was backed in a ditch. I got in Mr. Myers car

and Kenneth pulled his car out. I drove it across the highway in front of the place when we got it out. So I got out of the car and went on inside, and then Kenneth come in and bought some beer.

Q. Just a minute. Go back some. The jury probably couldn't hear you. You and Kenneth were asked to help Mr. Myers pull his car out?

A. Yes.

Q. All right, pick up up from there.

A. I went inside and then Kenneth came in and said he would buy some beer and take it to Mr. Myers outside, so he went out the door with some beer. I went out after him, and I saw this fellow here. He was inside and had come back outside and got in a car. Mr. Myers was standing there drinking a beer and he went over to this fellow's car. Me and Kenneth was standing there talking, and he left.

Q. You just saw him get in this man's car?

A. Yes, sir.

Q. And saw them leave together?

A. Yes, sir.

Q. All right, what did you do then?

[fol. 18] A. Kenneth said "i don't believe he was taking him home; let's go and tell Hop to watch and see where he went". We couldn't find Hop, so we went back to the cafe to catch a ride and found Hop and told him about it.

Q. Had you ever seen this party before, James Bushnell?

A. I saw him about once or twice.

Q. Did you know who he was?

A. No.

Q. Did you know anything about him?

A. No.

Q. You do know he is the man that picked up Mr. Myers that night?

A. Why, sure, Mr. Myers left with him.

Q. In a car?

A. Yes, sir.

MR. FISHER: I believe that's all.

BY THE COURT: Do you have any questions?

BY THE DEFENDANT: No.
(Witness excused.)

W. P. SEXTON, a witness called by the State, having been first duly sworn, upon his oath testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. FISHER:

Q. Your name is W. P. Sexton?
[fol. 19] A. Yes, sir.
Q. You are county attorney of Orange County, State of Texas, are you not?
A. Yes, sir.
Q. You were county attorney of this county on or about February 12, 1944?
A. Yes.
Q. Did you have occasion to take a statement from this defendant, James Bushnell?
A. Yes, sir.
Q. On or about that time?
A. Yes.
Q. Did he give you a statement regarding a robbery of a man by the name of Myers, Mr. H. L. Myers?
A. Yes.
Q. Mr. Sexton, before he gave this statement to you, did you warn him he didn't have to make this statement at all, and that any statement he gave could be used as evidence on the trial for the offense concerning which the statement was made?
A. Yes.
Q. Did he then make a statement to you about that offense?
A. He did.
Q. Did you reduce it to typewriting?
A. I did, sir.
[fol. 20] Q. After you had written it, did he read it or have it read to him?
A. If I remember correctly, I believe he read it.
Q. And he then signed the statement?
A. Yes.

Q. Mr. Sexton, I hand you this statement. Will you tell me whether or not this is the statement that James M. Bushnell made on that occasion and is the statement he signed?

A. Yes, sir.

MR. FISHER: We would like to introduce it in evidence, Your Honor.

(Whereupon, the instrument tendered by counsel for the State was received in evidence by the Court, marked by the reporter for identification as State's Exhibit No. 1, and a true and correct copy thereof is as follows:)

STATE'S EXHIBIT NO. 1

"THE STATE OF TEXAS
COUNTY OF ORANGE

I, James M. Bushnell, being in the custody of Hop Williamson, Constable of Precinct No. Four, Orange County, Texas, and having been warned by W. P. Sexton, the person to whom the hereinafter set out statement is by me made, that I do not have to make any statement at all and that any statement made by me may be used in evidence against me on the trial for the offense concern-[fol. 21] ing which this statement is made, do here make the following voluntary statement in writing to the said W. P. Sexton, towit:

My name is James M. Bushnell and I am twenty-five years of age. On the night of February 12, 1944, I was at Vidor, Texas, at a beer joint. While at this beer joint I drank quite a bit of rum and beer and took some amatol tablets. I then left the place and a man whose name I do not know got in the car with me. I rode down a side-road from Highway #90 approximately three miles. I then robbed this man and took what money he had on his person from him, which was approximately $200.00 in currency. During the robbery I hit him with a beer bottle and struck him with my fists. I then put him out of the car and then drove to Orange, Texas; I was arrested just across the Sabine River Bridge by Mr. Hop Williamson and Mr. I. W. Thompson. I returned from Louisiana

voluntarily with Mr. Hop Williamson. I was convicted in the State of Louisiana for swindling with worthless checks approximately three years ago and served a term in the Louisiana State Penitentiary.

I make this confession voluntarily and I was not coerced or threatened by Mr. Williamson or Mr. Thompson or by Mr. W. P. Sexton, the County Attorney, in the making of this statement. The same is true in every respect, and I realize that by the making of this voluntary statement that the same can be used against me on my trial. [fol. 22] Witness my hand this 14th day of February, 1944.

/S/ James M. Bushnell

Witnesses:

/S/ Mrs. Mollie Gunstream

/S/ Lois Watson "

MR. FISHER: That's all.

BY THE COURT: Do you have any questions?

BY THE DEFENDANT: Yes, sir.

CROSS EXAMINATION

BY THE DEFENDANT:

Q. At the time they brought me inside your office, I was threatened about the statement, is that right?

A. You didn't tell me anything about it, did you?

Q. You were in the office.

BY THE COURT: Did he know it?

A. Yes, sir, I don't see why he couldn't keep from hearing it.

BY THE COURT: Well, ask him.

Q. When he threatened, the Constable threatened to take me out and tie me, and take me out and cow-whip me unless they did get a confession, is that right?

A. I didn't hear that.

Q. You were in there. That's all.

RE-DIRECT EXAMINATION

BY MR. FISHER:

Q. Did he look like he had been abused?

[fol. 23] A. He was—he had a bandage on his head, yes, sir.

Q. When you took this statement from him, you gave him the warning you just stated?

A. I gave him the warning.

Q. Did he tell you then, about being mistreated or abused?

A. He didn't tell me anything.

Q. Did he tell you the statement he was making was true?

A. That is what he told me.

Q. Did he tell you he was being forced to make that statement?

A. No sir, he did not.

Q. Did he refuse in any way to make the statement?

A. No, sir, he did not.

MR. FISHER: I believe that's all.

RE-CROSS EXAMINATION

BY THE DEFENDANT:

Q. One think else I would like to ask. I was brought to your office, they said I had to sign a statement, said that day if it wasn't signed, they would get it one way or the other. You were sitting across the desk from me, and I couldn't read, my eye was closed.

A. No, sir, no such conversation as that took place, friend.

Q. Can you prove that is where this was, in your office?

[fol. 24] BY THE COURT: Is that all?

BY THE DEFENDANT: Yes, sir.

(Witness excused.)

L. G. STANDFIELD, a witness called by the State, having been duly sworn, upon his oath testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. FISHER:

Q. Mr. Standfield, you are sheriff of Orange County, State of Texas, are you not?

A. Yes, sir.

Q. Do you know anything about a pocketbook belonging to Mr. Myers?

A. Well, there was a deputy from—I believe it was Kountze, rang me and said he had found it, with some——and that two boys had brought it to him and said they found it between Terry and Connell.

Q. And that was a pocketbook that was identified as belonging to Mr. Myers?

A. That's right.

Q. This deputy was from where?

A. From Kountze, I believe it was.

Q. Do you know how it happened to be there?

A. He said these two boys were coming from Orange and found it and picked it up on the road, right in the [fol. 25] middle of the road, between Terry and Connell.

Q. That's in Orange County?

A. Yes, sir.

MR. FISHER: I believe that's all.

BY THE COURT: Do you have any questions?

BY THE DEFENDANT: No, sir.

(Witness excused.)

STATE RESTS

JAMES M. BUSHNELL, defendant, on behalf of himself, presented the following evidence after having first been duly sworn, to-wit:

BY THE DEFENDANT: Well, on the night of this robbery case you have charged me with—on Saturday—it's on a Saturday night they claim he had been to Buna, and came back by Vidor. I was standing in this little tavern. I was in there drinking. There was four boys at the same table I was. I didn't have whiskey, I had rum and I had taken some femotal and I drank some beer. That's the last I remember. When I woke up my car was over there by Louisiana.

They woke me up out of the back end of my car and gave me some coffee. It was one o'clock when I woke up and I drove my car to Lake Charles, Louisiana. When I got there, I ate breakfast and stood around town awhile. And I was coming back, on my way home, I live at Dequincy, and there was that law, Mr. Hop Williamson and [fol. 26] Thompson, and they caught me, and they stopped me and come back where my car was and jerked me out and beat me up. They threatened me, and I said "Why can't a man get justice?" And they said "You can't get justice here or in a courtroom", and they threatened to kill me. After they beat me up, they brought me to the police station and taken me up there and tried to get me to confess, and Thompson stomped me while I was on the floor, and I'm ruptured from it now. I have scars on my back I'll show you.

MR. FISHER: Pull your shirt off and show it to them.

BY THE DEFENDANT: Sure, I'll show it. This is what I told Mr. Bill Sexton in his office that day. I was beat worse than a dog; then when they got through beating, they taken me in an office and sat me in a chair and knocked me down. He said "I'm going to slap you—I'd like to kill you, but I want to do it the right way." He knocked me out twice and when they got through knocking me around, they threw some water on me, and then they threw me down the stairs. They was going to put me in the City, but they changed their minds and brought me to the County Jail. I laid there and then they took me to the hospital, my head ....., something wrong in my head, and also they gave me some stuff to put on my side. I was arrested in Louisiana without a permit, they went over and got me across the State line with a constable from Orange. Hop Williamson and Thompson is the men that done it. That is all I [fol. 27] have to say.

MR. FISHER: Now are you through?

BY THE DEFENDANT: Yes.

CROSS EXAMINATION

BY MR. FISHER:

Q. Can you think of anything else, is that all the things you can think of where you say were were abused?

A. Yes, one more thing, too. I'm not guilty of this charge they got me on, I'm framed, I'm not guilty. The $235.00 I got from my mother, she's not able to be here. I had borrowed $235.00 from a man in town—you don't have to take my word for that. Go down to the Mary Ann and Mr. Hardin, he can tell you.

MR. FISHER: Is that all?

BY THE DEFENDANT: Yes.

Q. You say you are being framed in this thing, that you are not guilty of this offense?

A. I am not.

Q. You didn't see Mr. Myers that night, or didn't rob him?

A. I never seen that man in my life.

Q. You didn't beat him about the head, as he testified?

A. No.

Q. You didn't take the money from him?

A. No.

[fol. 28] Q. You didn't get him in your car?

A. No.

Q. You didn't give him any liquor with any amatol in it?

A. I don't know anything about it. I was passed out in that place.

Q. Well, if you were passed out, you ought to be able to state definitely that you didn't give it to him, if you were passed out?

A. When a man passes out—I was under fematol. I got a medical discharge out of the Army, I served three years in the Hawaiian Islands.

Q. You don't have that with you, do you?

A. No, sir.

Q. What year did you get out in?

A. It's at home.

Q. You don't carry it around with you?

A. No.

Q. I thought you had been in the State Penitentiary for three years, in Louisiana?

A. I know, there are a lot of things that people thought.

Q. Well, that isn't true, you haven't been in the penitentiary?

A. I been to a house of correction.

Q. You weren't in the penitentiary for three years? [fol. 29] A. No, sir.

Q. How long were you there?

A. Eight months.

Q. Why did you tell Mr. Sexton you were there approximately three years?

A. I told him—when I came in his office my head was swimming. I couldn't see out of my eye. You see, I'm black under my eyes. He asked me had I been in and I told him I been in a house of correction eight months.

Q. All right. You didn't tell Mr. Sexton that you had not robbed Mr. Myers, did you?

A. I told it at first, but Mr. Thompson said "You just as well say you did, or we will get it out of you".

Q. Right in the presence of Mr. Sexton?

A. Mr. Sexton was there, but he was called off to talk to two ladies who was outside in the lobby.

Q. I'm talking about when you gave the statement, did you tell him you robbed Mr. Myers?

A. No, sir, I didn't.

Q. Why did he put it in this statement?

A. You ask me something I can't tell you.

Q. He was in on the framing?

A. I'm deaf. I can't hear only out of my left side.

Q. Can you hear me?

A. I can hear pretty good.

Q. Why do you say Mr. Sexton was framing you? [fol. 30] Would you like to tell us?

A. I can't say how he came in, but it was somehow in the deal.

Q. Who was trying to frame you?

A. It looks like Mr. Hop Williamson and Thompson.

Q. Why?

A. When they come there to beat me up and told me I wouldn't get justice.

Q. I said why?

A. I don't know the reason why.

Q. Don't you think that's peculiar, that these men would just pick out a stranger and try to frame him?

A. I wasn't a stranger. I worked at Consolidated Steel as a pipefitter for a year and a half.

Q. Have you ever seen Mr. Hop Williamson?

A. Yes, sir, several times.

Q. Can you think of any reason why they would frame you?

A. Well, I don't know what else you would call it, they come and beat me up in Louisiana, without a license.

Q. You are not answering my question. Will you tell us why these two men, why would they beat you up? What reason would they have for beating you up?

A. I don't know the reason.

Q. You can't give the jury any reason?

A. No, sir. I was just by myself, and they figured [fol. 31] they could lay it off on me as well as anybody else. I was in Vidor, with this money. I had $235.00 in my own pocket, and was buying beer—

Q. But they didn't pick you up in Vidor. Hop Williamson and Mr. Thompson didn't see you there.

A. I picked up two salesmen and carried them to Buna. When I come back, that's when I stopped to get something to drink.

Q. Do you take this amatol all the time?

A. Yes, sir.

Q. And why is that?

A. It's a nerve medicine. I have moods.

Q. Where do you get it?

A. The doctor prescribes it.

Q. You have to get them on a prescription?

A. Yes.

Q. Where did you get those you had?

A. Dr. A. L. Douglas.

Q. What were you doing in Vidor?

A. I just stopped when I come back, to get a bottle of beer. And I had some rum.

Q. Stopped in Vidor, from where?

A. I was coming to Orange, and I wanted to go to DeQuincy where my mother lives.

Q. How were you going to get there?

A. I had a car.

[fol. 32] Q. Where did you leave from that night?

A. This man where I stayed, Mr. Joiner—

Q. I mean, where did you come from to Vidor?

A I left Dequincy, I was to get some stuff for my mother. I stopped at my Aunt's and they had some liquor, and I stopped at these other two places that had liquor, and I was drinking. When I came back, I stopped at this place and there is where I was lit up. I had a good bit on my mind; I had $235.00—

Q. You had that much money?

A. Yes, indeed, I had that much money.

Q. What did you do with Mr. Myers glasses?

A. I never had any glasses.

Q. What did you do with the coupon books?

A. I didn't see them, I wasn't—don't know anything about a coupon book.

Q. You say you didn't see him in Vidor that night?

A. I never seen the man in my life.

Q. Why did you get him in your car?

A. Listen to me, I'm telling the truth, and God knows I'm tell the truth. I never seen him when I passed out at that table.

Q. If you didn't see him and he didn't get in your car, this young boy, Robert Marshall, is just mistaken when he says he saw Mr. Myers get in the car with you?

A. That's right.

[fol. 33] Q. He was mistaken. And Mr. Myers was mistaken when he looked you in the eye and said "You are the man that robbed me and assaulted me"?

A. He is mistaken.

Q. But you are right?

A. I'm just as right about what I know about it.

Q. Now, but you say Mr. Williamson and Mr. Thompson just framed you because you were the only man around Vidor they could pin it on? Is that your idea?

A. Well, when they knocked you around and beat you up and tell you you have to say you did it, what else are you going to think?

Q. You say you have some witnesses to that?

A. I have one to when Thompson was making that threat.

Q. You were placed in jail some twelve to fifteen hours after this happened, weren't you?

A. I was put in at 5:00 on Sunday morning.

Q. Sunday morning of what day?

A. It was in January. I think it was on the 15th or 16th of January.

Q. Are you sure it was the 15th or 16th of January and not the 15th or 16th of February?

A. Well, it was along in there somewhere. I think it was the 15th or 16th.

Q. Would you say it was February of January? We say it was February, when do you say it was?

[fol. 34] A. February.

Q. All right. You will agree with us on that, that you were placed in jail on the 15th or 16th of February of this year, is that right?

A. I can tell you I've been here ever since the arrest. I mean, the 14th or 15th of this month, I figure I've been in jail six months.

Q. Well, that would place you being arrested in January, which you weren't.

A. This court was in session when they brought me in.

Q. February is when it was.

A. That's when it was.

Q. All right, and you have been in jail ever since then?

A. Yes.

Q. What has kept you from getting these witnesses you've told us about?

A. I ain't seen any people to get them over here. My mother is sick. Besides that, I don't have a father that I can depend on.

Q. Can't you tell the sheriff to serve subpoenas on the witnesses? Can you ask the court?

A. I got some letters—I wrote to my sister and my mother.

Q. They didn't receive them?

A. Nobody knows if the mail got out.

[fol. 35] Q. They are not interested enough to come over here and look after you?

A. She's not able.

Q. You don't have anybody interested enough in you to come over?

A. My mother does.

Q. You were brought over here the last term of court and you were ready to plead guilty?

A. I wasn't ready to plead guilty.

Q. You didn't tell the sheriff, Standfield, that you wanted to plead guilty?

A. No, sir.

Q. You didn't tell Deputy York you wanted to plead guilty?

A. No, sir.

Q. But then you changed your mind?

A. No, sir.

Q. Do you know why Hop Williamson and Mr. Thompson arrested you that night?

A. I don't know the reason. I know they come in Louisiana and arrested me. I don't know the reason.

Q. Why do you think they came to Louisiana to get you?

A. I don't know the reason for what they done, when they run up behind and shot at the back of my car and rode up and grabbed me and beat me over the head out [fol. 36] on the Louisiana highway.

Q. You were driving hard to get out of this County—

A. No, I was coming back this way.

Q. What were you going to do when you got back?

A. I was going back to this bar—

Q. Oh, I thought you were going home?

A. I had been home. I wanted to go to get something to drink.

Q. You were almost out, but you wanted to get something to drink?

A. Yes, I might have got lit up, but I wanted something to drink.

Q. And you don't know the reason why Williamson and Thompson was looking for you?

A. They didn't say nothing, they run up and as soon as my car—I stopped, they jerked me out and beat me up, and over the head, out in the highway.

Q. Do you think it was right for a young man like you to take an old 59-year-old man and beat him out, put a bunch of scars on his face, take his money and hit him? But the officers has to get a little bit rough with you and you don't think that's right, is that the ticket?

A. No, they don't have the right to do me like that.

Q. They did yourlike they should have done you.

A. No, they shouldn't have beat me and stomped me in the police station.

Q. Why?

[fol. 37] A. Because they shouldn't. Not while I was still in Louisiana, and get me and stomp me.

Q. I guess you think you did what you should have done to Mr. Myers?

A. I didn't do it.

Q. Suppose you had—would you have said it was right to do it?

A. I never done it.

Q. What kind of treatment would you be in favor of giving a man that would beat Old Man Myers up as he said he was beaten up?

A. All I can say, I didn't do it.

Q. You are not answering my question.

A. That is all I care to say.

Q. What kind of treatment would you be in favor of for such a man?

A. I wouldn't be in favor of beating him up like a dog, like they done me. I begged for mercy.

Q. You think they gave you mercy?

A. No.

Q. Just like you meted out to Mr. Myers, or would have to anybody else?

A. I didn't do anybody like that.

Q. You only mean to testify you didn't?

A. That's right.

Q. And you are the only man that has testified you [fol. 38] didn't. What this young man by the name of Robert Marshall says, he says Mr. Myers got in the car with you?

A. He is wrong.

Q. Mr. Myers testified "That is the man that robbed me and beat me up", and you gave a statement to Mr. Bill Sexton that you are the man that did it.

A. They—I had to do it.

Q. They found some gas ration tickets?

A. I didn't see them.

Q. And Mr. Myers glasses on your person.

A. I didn't see them.

Q. So how are you going to make anybody believe you didn't do it?

A. I didn't see his things.

Q. I believe you said you called Mr. Sexton's attention to some marks on your stomach?

A. Yes, and I showed him the rupture they gave me.

Q. Did you call Mr. Sexton's attention to that?

A. I told him. He seen the way my eyes was beat up. I asked for a doctor.

Q. Did you ever ask Sheriff Stanfield or Deputy York to subpoena any witnesses for you?

A. They wouldn't see that a thing was done. Mr. Standfield was gone up—somewheres.

Q. You don't have any friends at all?

A. I have friends.

[fol. 39] Q. Where are they? In Louisiana? None of them are here.

A. No, I don't have them right here. I couldn't make a call, anyway.

Q. You haven't had time since February 15th?

A. I've been sick; I tried to get a doctor to do something for me, and I couldn't even get a doctor.

Q. You could write some letters?

A. I couldn't get them sent.

Q. You mean the officers wouldn't mail them?

A. I don't know the reason; I know they never did go.

MR. FISHER: That's all.

BY THE COURT: All right, do you want to get any other witnesses?

BY THE DEFENDANT: That is all I have to offer.

DEFENSE RESTS

LOUIS YORK, a witness called by the State in rebuttal, having been first duly sworn, upon his oath testified as follows:

DIRECT EXAMINATION

BY MR. FISHER:

Q. You are a deputy sheriff, are you not?

A. That's right.

Q. And you work for Dick Stanfield, sheriff of Orange County?

A. Yes, sir.

[fol. 40] Q. Did you ever fail to mail any letters that have been given you by the inmates of the jail?

A. I have not.

Q. Has this defendant James Bushnell ever given you any mail to mail, any letters?

A. Seems to me like I mailed some letters, in fact, I took out of my pocket to send some telegrams for him.

Q. Did he ever give you a list of names to subpoena as witnesses?

A. Not that I know of, no.

Q. Do you remember the last term of Court, he offered himself as wanting to plead guilty?

A. He did.

MR. FISHER: That's all.

BY THE COURT: Any questions?

BY THE DEFENDANT: Yes.

CROSS EXAMINATION

BY THE DEFENDANT:

Q. You say you sent some telegrams for me?

A. Yes, I did.

Q. You sent two when I first got here?

A. Yes.

Q. To my sister and one to my mother?

A. That is right.

Q. But you never mailed any letters?

A. If they was brought down, I mailed them.

[fol. 41] Q. You did? send any letters?

A. Seems like Mr. Wise brought them down.

Q. You didn't mail any?

A. He brought them to me. That's my business.

Q. My mother never received them.

A. Well, I wouldn't know why they didn't get them.

BY THE COURT: Is that all?

BY THE DEFENDANT: Yes.

(Witness excused.)

W. P. SEXTON, a witness recalled by the State on rebuttal, having been previously sworn, testified further as follows:

DIRECT EXAMINATION

BY MR. FISHER:

Q. Mr. Sexton, when you were taking the statement from the defendant, did he show you any marks or injuries on his back which he had suffered in any way by being hit?

A. No, sir.

Q. By the constable Williamson, or Mr. Thompson?

A. No, sir.

MR. FISHER: That's all.

CROSS EXAMINATION

BY THE DEFENDANT:

Q. When they brought me into your office to sign that, I asked about a doctor?

A. You didn't ask me anything about a doctor.

[fol. 42] Q. I asked you personally when I was sitting in front of you, and my nose and eyes was bleeding, and you said "You'll get a doctor whenever it's time".

A. I didn't say anything like that.

BY THE DEFENDANT: That's all.

(Witness excused.)

HOP WILLIAMSON, a witness called by the State on rebuttal, having heretofore testified, upon his oath testified further as follows:

DIRECT EXAMINATION

BY MR. FISHER:

Q. Mr. Williamson, I want to ask you one question: Did you or any other deputy frame this defendant?

A. No, sir.

Q. Why were you looking for him that night?

A. Because I had the information on him that he was the man that robbed Mr. Myers.

Q. Why did you go across over the State line?

A. Because I run him jumped him over at the railroad tracks and run him across?

Q. What do you mean, you "jumped him"?

A. Well, he come by and we took out after him.

Q. Was he hard to catch, Mr. Williamson?

A. He gave us a good race, Mr. Fisher.

Q. What is the custom as to where he was in Louisiana and as to you as a Texas officer in apprehending people [fol. 43] who have violated a law in Texas? What advice or, what instructions do Texas officers afford to Louisiana officers?

A. When we was already trying to find him, get him located, we asked an officer over there, and he said if he run into him, he would run him across the line in Vinton or Deridder, and he said he would follow him and back us up. And when I caught him, I asked him then if he wanted to go there and let them run him across or come on back, and he said "I'll come on back".

Q. What happened when he came back?

A. We carried him to the police station. They was helping us trying to stop him at the hotel, and we brought him back to the police station. We got to keep him there, ate dinner there, and about three or four o'clock, they took me off then.

Q. Did you or officer Thompson put these scars on his body?

A. No, sir.

Q. Did you hit him or beat him in any ways to make those scars?

A. No, he told me about he had been shook up in the Army and he was taking Amatol tablets for relief.

MR. FISHER: I believe that's all.

CROSS EXAMINATION

BY THE DEFENDANT:

Q. When you realized that you arrested me over there, [fol. 44] you threw me out of the car again in Louisiana?

A. No.

Q. Put me in a '41 Buick that belong to this other guy that run me down first and beat me and stomped me,

then you got me in your car and brought me to jail and finished the business there?

A. The man was Lee Anderson and he runs a grocery store.

Q. The man I'm talking about is Henry Thompson, and he's a tinhorn gambler.

BY THE DEFENDANT: That's all.

(Witness excused.)

MR. FISHER: That's all for the State.

(Case concluded.)

[fol. 45] REPORTER'S CERTIFICATE

THE STATE OF TEXAS
COUNTY OF ORANGE

I, Winona Gibson, Official Court Reporter in and for the 128th Judicial District of Texas, Orange County, Texas, do hereby certify that I received the shorthand notes in a cause styled and numbered 4496, The State of Texas vs. James M. Bushnell, 1st Judicial District of Texas, from the present Presiding Judge of said District, the Honorable O'Neal Bacon, by United States mail, with his directions that I prepare a Statement of Facts from the notes of the late Leroy Alvis, Official Court Reporter for said 1st Judicial District.

I further certify that the above and foregoing 44 pages of typewritten matter constitute a transcript of such notes, true and correct to the best of my ability; and further, that the facts stated in the opening paragraph of this Statement of Facts are as reflected in said notes.

WITNESS MY HAND at Orange, Texas, this 10th day of September, 1960.

/s/ Winona Gibson
WINONA GIBSON, Official Court Reporter in and for the 128th Judicial District of Texas, Orange, County, Texas

[fol. 46] IN THE
128th DISTRICT COURT OF ORANGE COUNTY

CERTIFICATE OF CLERK AS TO COUNSEL—NOV. 9, 1959

THE STATE OF TEXAS
COUNTY OF ORANGE

This is to certify that in Cause No. 4496 entitled State of Texas Vs. James M. Bushnell, charged in the Indictment with Robbery by Assault, The defendant James M. Bushnell, according to the records in the office of the District Clerk of Orange County, Texas, had no attorney to represent him in the trial of this Cause, which trial took place on June 5th, 1944.

GIVEN under my hand and seal of the District Court of Orange County, at office in Orange, Texas, this 9th day of November, A.D. 1959.

/s/ Mrs. T. M. Dodd, Clerk
of the District Court of Orange
County, Orange, Texas.

[fol. 47] IN THE
128th DISTRICT COURT OF ORANGE COUNTY

VERDICT—June 5th 1944

We the Jury in the Case, the State vs JAMES M BUSHNELL Deft find the defendant guilty as charged in the indictment and assess his punishment at 35 years confinement in State *the* penitentary

RAYMOND LAVERGE
Foremen of Jury.

THE STATE OF TEXAS
COUNTY OF ORANGE

I, Mrs. T. M. Dodd, Clerk of the District Court in and for said County and State, do hereby certify that the above and foregoing is a true and correct copy of the Verdict in Cause No. 4496 entitled THE STATE OF TEXAS vs. JAMES M. BUSHNELL as the same appears in my office.

Given under my hand and the seal of said Court, at my office in Orange, Texas, on this the 29th day of May, A. D. 1959.

/s/ Mrs. T. M. Dodd
MRS T. M. DODD, Clerk,
District Court Orange County, Texas.

By ..... Deputy

[fol. 48] IN THE
128th DISTRICT COURT OF ORANGE COUNTY

JUDGMENT AND SENTENCE

BE IT REMEMBERED, That on Monday, the 29th day of May, 1944, there came on and was held a regular term of the District Court of Orange County, Texas, at the Court House thereof, at Orange, Texas.

Present and presiding: Hon. F. P. Adams, Judge, District Court of Orange County; Joe J. Fisher, District Attorney; T. M. Dodd, District Clerk, and L. G. Stanfield, Sheriff.

No. 4496

THE STATE OF TEXAS

vs.

JAMES M. BUSHNELL

June 5th 1944
Indicted for Robbery by Assault

THIS DAY this cause was called for trial, and the State appeared by her District Attorney, and the Defendant James M. Bushnell appeared in person announced ready for trial; and the Defendant in open Court pleaded not guilty to the charge contained in the Indictment herein; and thereupon a jury, to-wit: Raymond LaVergne and eleven others, was duly selected, empaneled and sworn, according to law, who, having heard the indictment read, and the defendant's plea of not guilty thereto; and having heard the evidence submitted, and having been duly charged by the Court, retired in charge of the proper officer, the Defendant being present, and in due form of law returned in to open Court the following verdict, which was received by the Court, and is here now entered upon the minutes of this Court, to-wit: We the jury in the case the State Vs. James M. Bushnell Defendant find the defendant guilty as charged in the indictment and assess his punishment at 35 years confinement in the State Penitentiary

RAYMOND LAVERGNE
Foreman of jury

It is, therefore, considered and adjudged by the Court that the Defendant James M. Bushnell is guilty of the offense of Robbery by Assault as found by the jury, and that he be punished, as has been determined, by confinement in the State Penitentiary for 35 years, and that the State of Texas do have and recover of the said Defendant James M. Bushnell all costs in the prosecution expended, for which execution will issue, and that the said Defendant be remanded to jail to await the further order of this Court herein.

No.

THE STATE OF TEXAS

vs.

day of 19

Order New Trial

ON THIS DAY came on to be heard the motion of the Defendant to set aside the verdict and judgment herein rendered and grant him a new trial of this cause, and the State being present in Court by her County Attorney, and the Defendant being present in Court in person, and the Court having heard the said motion and the evidence thereon submitted, is of the opinion that the same should be . It is therefore considered, ordered and adjudged by the Court that the said motion for a new trial herein be and the same is

No. 4496

THE STATE OF TEXAS

vs.

JAMES M. BUSHNELL

June 20th 1944

THIS DAY this cause being again called; the State appeared by her District Attorney, and the Defendant James M. Bushnell was brought into open Court in person,

in charge of the Sheriff, for the purpose of having the sentence of the law pronounced in accordance with the verdict and judgment herein rendered and entered against him on 23rd day of this term. And thereupon the Defendant James M. Bushnell was asked by the Court whether he had anything to say why sentence should not be pronounced against him, and he answered nothing in bar thereof. Whereupon the Court proceeded, in the presence of said Defendant James M. Bushnell to pronounce sentence against him as follows, to-wit: "It is the order of the Court that the Defendant James M. Bushnell who has been adjudged to be guilty of Robbery by Assault, whose punishment has been assessed by the verdict of the jury at confinement in the State Penitentiary for Thirty Five years, be delivered by the Sheriff of Orange County, Texas, immediately to the Superintendent of the Penitentiaries of the State of Texas, or other person legally authorized to receive such convicts, and said James M. Bushnell shall be confined in said Penitentiary for Not less than Five no more than Thirty Five years, in accordance with the provisions of the law governing the Penitentiaries of said State."

And the said James M. Bushnell is remanded to jail until said Sheriff can obey the directions of this sentence.

F. P. Adams, Judge,
District Court, Orange County, Texas.

CLERK'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF ORANGE)

I, Mrs. T. M. Dodd, Clerk of the District Court in and for Orange County, Texas, do hereby certify that the above and foregoing is a true and correct copy of Judgment and Sentence in Cause No. 4496, styled The State of Texas vs. James M. Bushnell as same appears of record in Vol. E page 52 of the Criminal Minutes of the District Court of Orange County, Texas.

Given under my hand and seal of the District Court of Orange County, at office in Orange County, Texas, this 29th day of May, A. D. 1959.

/s/ Mrs. T. M. Dodd
(SEAL) MRS. T. M. DODD
Clerk District Court, Orange County, Texas.

[fols. 49-50]

[fol. 51]

IN THE
COURT OF CRIMINAL APPEALS
TRAVIS COUNTY, AUSTIN, TEXAS

EX PARTE

JAMES M. BUSHNELL, PETITIONER

vs.

O. B. ELLIS, Director, Texas Department of Corrections, Huntsville, Texas, RESPONDENT

PETITION FOR THE WRIT OF HABEAS CORPUS
APPLICATION NO. .....

PETITION FOR THE WRIT OF HABEAS CORPUS:

To the Presiding Judge of the above Stated Court:

Comes now James M. Bushnell, hereinafter styled Petitioner, complaining of O. B. Ellis hereinafter styled Respondent, and with leave of the Court first had and obtained files this his petition for the writ of habeas corpus, and for cause of this action Petitioner would respectfully show the following facts . . . to-wit:

That Petitioner is illegally and unlawfully restrained in his liberty by said Respondent by virtue of a certain committment based upon the judgment of a conviction entered by the Honorable F. P. Adams, judge presiding, 128th Judicial District Court in and for Orange County, Texas. Said judgment is void and violating of the Texas constitution and violative of the 6th and 14th amendments to the Constitution of the United States as more particularly set forth and complained of herein.

JURISDICTION

Jurisdiction of this honorable court is invoked pursuant to Art. 119 V.R.C.C.P. Acts 1943, 4th Leg., page 354, ch. 233 S.L., to review the judgment of the 128th Judicial District Court in Cause No. 4496 and to order Petitioner discharged from any further illegal and any unlawful imprisonment.

STATEMENT OF THE CASE:

A duly elected, empaneled, and sworn Grand Jury in and for Orange County, Texas, returned in and to the 128th Judicial District Court of said county, during the January Term A.D. 1944 a bill of indictment charging [fol. 52] Petitioner with the serious charge of robbery by assault.

On June 5th, A.D. 1944 Petitioner was called on to plead to the charge and upon calling of the case for trial, Petitioner stated to the Court that he had no attorney, was to poor to employ counsel, was unable to defend himself, and asked the Court to appoint counsel to defend him. Said request was denied; following the denial thereof a jury was empaneled and sworn, seated in the jury box and the trial commenced. Petitioner was, by the jury, found guilty as charged and punishment was assessed at 35 years in prison.

EXHIBITS:

Attached hereto and made a part hereof are photostatic copies of the indictment, judgment, sentence, jury verdict, and an affidavit of the clerk of the 128th District Court of Orange County, Texas.

QUESTION PRESENTED

Whether due process of law was violated as guaranteed by the 14th amendment to the Constitution of the United States in that Petitioner was forced to trial, in a Texas State Court for a serious charge of robbery . . . . a criminal offense, without the Court appointing counsel to represent him and protect his rights, and Petitioner being an indigent person with a sixth grade education, not being familiar with, or skilled, nor trained, in the science of law, and unable to defend himself adequately in any court room, for any charge.

ARGUMENTS

Article I, Section 10, Bill of Rights of Constitution of Texas: "An accused may be represented by counsel, himself, or both."

Article I, Section 19, Texas Constitution: "No citizen of the State shall be deprived of life, liberty, property, privilege, or immunities, or in any manner disfranchised except by the due course of the law of the land."

Texas Manuel of Reversible Errors, Section 91, reads as follows: "A defendant is entitled to the advice and assistance of (counsel) a court appointed attorney to waive the statutory right of two days after indictment to prepare his case for trial."

In the case of Ex Parte Epperson, 153 A.R. 578, 225 S.W. 2d 790; and Parsons v. State, 153 A.R. 157, 218 S.W. 2d 202, the Court said: "The necessity for furnishing counsel to accused on trial for a crime less than capital [fol. 55] depends upon facts of each case including gravity of the crime, age and education of the accused, conduct of the prosecuting officers nature of the offense charged, and the possible defense thereto."

At the time of Petitioners trial he was forced to trial without counsel. Petitioner being 22 years old, and his education was limited to six years, there can be no doubt but what an advantage was taken of Petitioner by the arbitrary denial of the assistance of counsel.

In Tompkins v. Missouri, 323 U.S. 485 the Court said: "It is the duty of the Court whether requested or not to assign counsel for him as a necessary requisite of due process of law. One must be assigned to him if he is unable to employ one and incapable of making his own defense."

Petitioner contends the failure of the trial judge to appoint counsel to represent him denied him due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Petitioner contends he had a constitutional right to counsel. It stems directly from the Fourteenth Amendment. See Wade v. Mayo, 334 U.S. 672.

Sixth Amendment of the United States Constitution provides in part: "And to have the assistance of counsel for his defense."

Tompkins v. Missouri, supra, "The accused must be advised of his right to counsel and a request for counsel is not necessary."

Petitioner did not waive his right to counsel. If the accused is not represented by counsel, and has not competently and intelligently waived his constitutional rights, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or his liberty. 303 U.S. 629.

Petitioner had only a sixth grade education, not skilled, nor trained, in the science of law and was therefore unable to adequately defend himself and in open court asserted his right to counsel by stating to the Court that he was too poor to employ counsel and was not able to adequately and properly defend himself.

What then does a hearing include? Historically and in practice, in our country at least, it has always included the right to the assistance of counsel when desired and provided by the party asserting the right. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable generally of determining for himself whether [fol. 54] the indictment is good or bad; he is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissable. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he doesn't know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the illiterate, or those of feeble intellect? If in any case, civil or criminal, a State or Federal Court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him it reasonably may not be doubted that such a refusal would be a denial of a hearing, and therefore of due process of law in the constitutional sense. See Powell v. Alabama, 287 U.S. 68, 69; Chandler v. Fretag, 348 U.S. 3, 99 L. Ed. 4.

Petitioner being forced to trial without appointment of counsel, and his incapability of representing himself adequately, resulted in him being taken advantage of.

Absence of counsel when aggravated by circumstances showing that it resulted in Petitioner being taken advantage of or prejudiced violates due process of law which is guaranteed by the 14th and 6th Amendments to the Constitution of the United States. See Townsend v. Burke, 68 U.S. 1252.

Petitioner proves his constitutional rights were violated by the Court in that no counsel was appointed to represent him, and further, Petitioner was taken advantage of because he was not skilled in the science of law and not familiar with court room procedure so as to adequately and properly defend himself.

Convictions cannot stand if the accused stood trial without benefit of counsel and yet was so unskilled, so ignorant of the law and its procedure, or so mentally deficient as not to be able to comprehend the legal issues involved in his defense. See Williams v. Kiser, 323 U.S. 471; Wade v. Mayo, 334 U.S. 672; Palmer v. Ash, 342 U.S. 134. The requirement of the 14th Amendment is for a fair trial. See Betts v. Bradt, 316 U.S. 455, 462.

Petitioner respectfully moves this honorable Court issue the writ of habeas corpus, under the authority of Article 119 V.A.C.C.P., forthwith and instanter, directed against O. B. Ellis, Texas Department of Corrections, the Respondent herein named.

[fol. 55]

Prayer

Wherefore Petitioner prays this honorable Court issue its most gracious writ of habeas corpus, or order to show cause, directed to the Respondent herein named commanding him to appear in this Court on a day certain to be therein named and produce the body of Petitioner to the end that he may have an opportunity to prove the issues of fact controlling the constitutional validity of his detention.

That upon a final hearing thereof that an order be issued discharging your Petitioner from any further illegal imprisonment and restraint, all for which Petitioner ever prays.

Respectfully submitted

/s/ James M. Bushnell
Petitioner Pro Se
Box 32, Sec. Unit
Huntsville, Texas

Sworn to and subscribed before me this 5th day of Jan. A.D. 1960.

/s/ R. W. Burkett
(SEAL) Notary Public in and for
Walker County, Texas

[fol. 55-A]

COURT OF
CRIMINAL APPEALS OF TEXAS
Clerk's Office

NOTICE OF DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS

Austin, Texas 1-15-60

Dear Sir:

This is to advise that the Court has today denied without written order the Petition for writ of habeas corpus in Application No. 93, James M. Bushnell.

Sincerely yours,

(init) G. H.
GLENN HAYNES, Clerk

[fol. 56]

IN THE
COURT OF CRIMINAL APPEALS
TRAVIS COUNTY, AUSTIN, TEXAS

JAMES M. BUSHNELL, PETITIONER

versus

O. B. ELLIS, Director, Texas Department of Corrections, Huntsville, Texas, RESPONDENT.

PETITION FOR REHEARING ACTION No. 93

To the Presiding Judge of the above stated Court:
And may it please the Court:

Comes now, James M. Bushnell, Petitioner in the above styled and numbered cause and respectfully petitions this Court for a rehearing in the above cause. Petitioner moves the Court reverse, vacate, and set aside the order of January 15, 1960, and in turn grant the petition for habeas corpus in the above cause, for the following reasons to-wit:

Petitioner has presented to this Court the properly drawn petition for habeas corpus and the allegations therein are well founded and supported by the judgment of the Trial Court which shows on its face that Petitioner had no attorney at his trial and in further support of the Petition, attached thereto, is a affidavit of the District Court Clerk stating the records of her indicate that Petitioner had no attorney.

Petitioner has brought himself within the rule by allegations in the petition alleging that Petitioner was mentally incompetent to present a defense to the serious offense with which he was charged to come further within the rule, a confession taken during a period of illegal detention, and such confession being extracted by coercion and duress at the hands of Orange County officers, such confession was admitted in evidence by the State of Texas at the trial of Petitioner. Further, Petitioner was never taken before a magistrate as is required by Art. 217 V.A.C.C.P., and as injury arising therefrom, said con-

fession was extracted by physical abuse of Petitioner, [fol. 57] such abuse being administered by the Orange County police officers. Further, Petitioner was arrested without a warrant for the offense of drunk driving and upon being placed in jail Petitioner was questioned about the robbery of one gambler of Orange County, Texas. Petitioner denied any knowledge of any robbery, and the injured party was called upon to identify Petitioner. Upon a face to face meeting of Petitioner and the injured party, Petitioner could not be positively identified, thereupon, the physical abuse was imposed upon Petitioner, and thus the confession, used as evidence by the State of Texas, was extracted from Petitioner.

Therefore, had Petitioner been afforded the constitutional right of assistance to counsel he could have presented the following defenses: Arrest without a warrant for the offense charged; no positive identification; a valid objection could have been made to the admission of the confession as evidence, as such confession being taken during a period of illegal detention; force and physical abuse being imposed by police authorities to extract such confession; not being at the scene of the crime. All of the above mentioned defenses, in order to be properly presented, would most certainly require the assistance of counsel. Petitioner is now squarely within the rule that requires appointment of counsel in non-capital cases.

The Supreme Court of the United States in the cases of Williams v. Kaiser, 323 U.S. 471, 473-474, and House v. Mayo, 324 U.S. 42, and in White v. Ragen, 324 U.S. 760 at page 763 thereof held that, where petitions were denied without requiring the Respondent to answer the Supreme Court of the United States would assume the allegations to be true. Such an assumption will no doubt be made in Petitioners case upon application for certiorari filed with the United States Supreme Court; such application will be filed upon the denial of this petition for rehearing, and attached to such application will be exhibits that are attached to the petition for habeas corpus filed in this Court; such exhibits present, and show that Petitioner had no counsel and such exhibits not only make out a prima facie case but support the petition to the extent that the same should be granted.

When this Court will not recognize the judgment of the Trial Court, which judgment supports the allegations made by Petitioner, and denies a petition without first satisfying the Court that the allegations as made are not well not founded, then this Court extends the constitutional deprivation that has been claimed to the extent [fol. 58] that this Court will not, and does not, extend the constitutional right to due of law as conferred by the Constitution of the United States.

For the reasons so stated Petitioner prays the court grant this petition for rehearing and in turn grant the writ of habeas corpus, and Petitioner ever prays.

/s/ James M. Bushnell
Petitioner

Sworn to and subscribed before me this 22nd day of Jan. A.D. 1961.

(SEAL)

/s/ R. W. Burkett
Notary Public in and for
Walker County, Texas

[fol. 59]

COURT OF
CRIMINAL APPEALS OF TEXAS
Clerk's Office

NOTICE OF DENIAL OF MOTION FOR REHEARING

Austin, Texas, 2-16-20

Dear Sir:

This is to advise that the Court has today denied without written order the Relator's Motion for Rehearing in Application No. 93, James M. Bushnell.

Sincerely yours,

(init) G. H.
GLENN HAYNES, Clerk

[fol. 60] SUPREME COURT OF THE UNITED STATES

No. 16 Misc., October Term, 1960

JAMES M. BUSHNELL, PETITIONER

vs.

O. B. ELLIS, Director, Texas Department of Corrections

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND PETITION FOR WRIT OF CERTIORARI—
Dec. 5, 1960

ON PETITION FOR WRIT OF CERTIORARI to the Court of Criminal Appeals of the State of Texas.

ON CONSIDERATION of the motion for leave to proceed in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 561 and placed on the summary calendar.

December 5, 1960

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[fol. 61] IN THE
DISTRICT COURT OF ORANGE COUNTY, TEXAS

MAY TERM, A. D. 1944.

No. 4496

THE STATE OF TEXAS

vs.

JAMES M. BUSHNELL

INSTRUCTIONS TO THE JURY

GENTLEMEN OF THE JURY:

The defendant, James M. Bushnell, stands charged by indictment with the offense of robbery by putting in fear of life or bodily injury of one H. L. Myers, alleged to have been committed in the County of Orange and State of Texas, on or about the 12th day of February, A. D. 1944.

To this charge the defendant has plead not guilty.

You are the exclusive judges of the facts proved, the weight of the evidence and the credibility of the witnesses; but the law you will receive from the Court contained in these written instructions and be governed thereby.

The defendant is presumed to be innocent until his guilt is established by legal and competent evidence to the satisfaction of the minds of the jury beyond a reasonable doubt. The burden of this proof is upon the State, and if, upon a consideration of the whole case, taking into consideration all the facts and circumstances in evidence, you have a reasonable doubt as to the defendant's guilt, you will find him not guilty.

In deliberating upon this case you are instructed not to refer to or discuss any matter or issue not in evidence before you; neither shall you separate from each other nor talk with anyone not of your jury.

Our statutes provide that if any person by assault or by putting in fear of life, or bodily injury, shall fraudulently take from the person or possession of another any property with the intent to appropriate the same to his own use and benefit, he shall be punished by confinement in the penitentiary for life, or for a term of years not less than five years.

The use of any unlawful violence upon the person of another with intent to injure the other person, whatever be the means or degree of violence used, is an assault and battery. Any attempt to commit a battery, or any threatening gesture, showing in itself, or by words accompanying it, an immediate intention, coupled with an ability to commit a battery, is an assault.

By the expression "coupled with an ability to commit a battery" is meant that the person making the assault must at the time be in such position and within such distance of the person assaulted to enable him to commit a battery on such person by the means used.

Now, bearing in mind the foregoing instructions, if from the evidence you believe beyond a reasonable doubt that the defendant, James M. Bushnell, on or about the 12th day of February, A. D. 1944, in the County of Orange and State of Texas, as alleged in the indictment, did unlawfully in and upon H. L. Myers make an assault, and did then and there by said assault, or by putting the said H. L. Myers in fear of life or bodily injury, fraudulently and against the will of the said H. L. Myers, take from the person or possession of the said H. L. Myers without his consent Two Hundred Dollars in money, and with the intent then and there to deprive the said H. L. Myers of the value of the same, and to appropriate the same to the [fol. 62] use and benefit of him, the said James M. Bushnell, then you will find the defendant guilty and assess his punishment at confinement in the penitentiary for life or for any term of years not less than five years.

You are further instructed that unless you believe from the evidence beyond a reasonable doubt that prior to the time the defendant made and signed the written statement introduced in evidence, if he did, that he, the defendant,

was properly warned by the officer to whom said statement was made, first, that he did not have to make any statement at all, and second, that any statement made by him, the defendant, may and could be used in evidence against him on a trial for the offense concerning which it was made, and after being so warned, he voluntarily and without coercion, persuasion, inducement or promise of immunity of any kind, made the statement introduced in evidence, and unless you so believe, or if you have a reasonable doubt thereof, you will disregard such statement for any and all purposes and all parts thereof and consider the same for no purpose.

If you should find that the defendant, James M. Bushnell, did not rob H. L. Myers at the time and place alleged in the indictment, or if you have a reasonable doubt thereof, you will find the defendant, James M. Bushnell, not guilty.

If upon a consideration of the whole case you have a reasonable doubt as to the guilt of the defendant, you will find him not guilty.

Your verdict must be in writing and signed by your foreman.

/s/ F. P. Adams
Judge Presiding.

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